

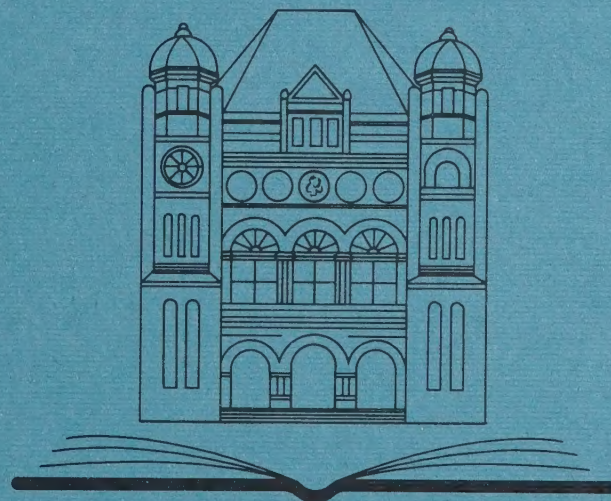
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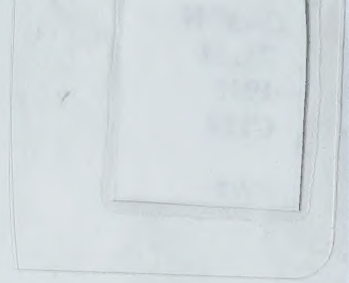
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**SUNDAY SHOPPING:
A LEGISLATIVE & JUDICIAL HISTORY**

Current Issue Paper 119



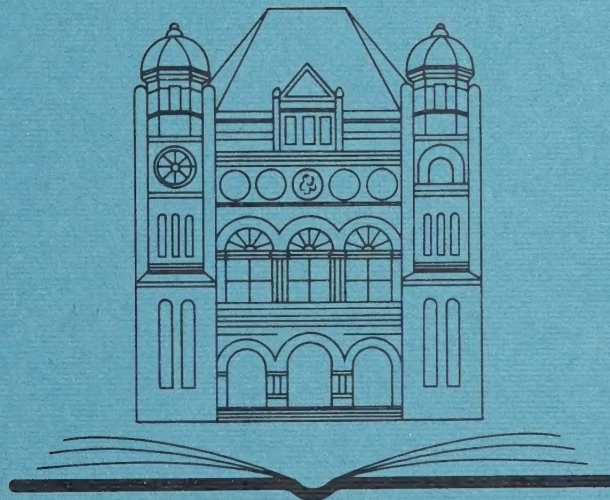
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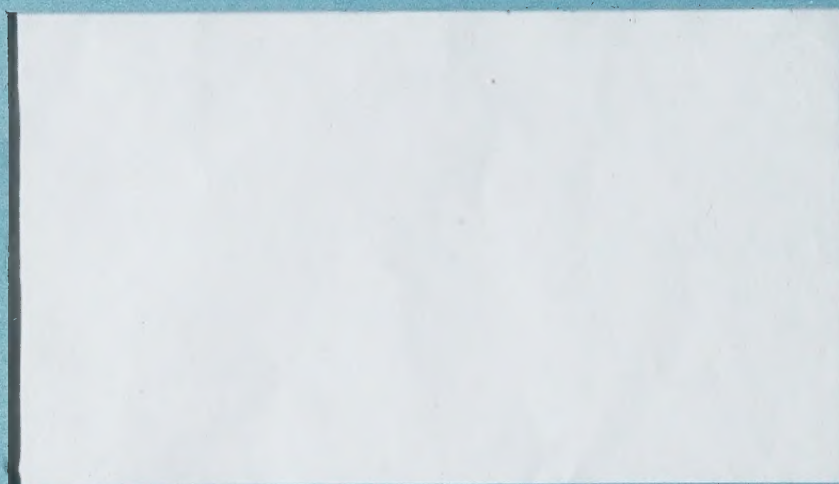
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**SUNDAY SHOPPING:
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Current Issue Paper 119

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INTRODUCTION

The issue of Sunday shopping has in one way or another involved the citizens of Ontario and their Legislature in active, highly charged debate for well over 20 years. It continues to do so. Recently, an eight-month hiatus in the enforcement of the Retail Business Holidays Act ended with the Court of Appeal upholding the constitutional validity of the Act and reversing an earlier lower court decision. Shortly thereafter the government announced its intention to revisit the issue once again by introducing new legislation. Bill 115, the latest legislative foray into the Sunday shopping controversy, received first reading on June 4, 1991.

Over the years, the debate has spilled over into the courts. In their various legislative forms, the Sunday observance and retailing laws have sparked a number of legal challenges resulting in a considerable amount of judicial thinking in the area. Within the last decade alone, the Supreme Court of Canada has considered the Sunday shopping issues on two occasions; the Ontario Court of Appeal, on at least three occasions; and the Ontario High Court, on several more.

This paper provides an historical legislative and judicial context to the ongoing debate. Although the issue has heated up considerably in the last two decades, the concern surrounding Sunday retailing has existed from as far back as 1763, when the land which is now called Ontario was ceded to Britain. The paper will review the religious origins of the regulation of Sunday activities and trace the development to the present-day legislative focus on secular purposes. The discussion of this development will include reference to the most significant court decisions and, in particular, to the decisions under the Retail Business Holidays Act.

ORIGINS OF SUNDAY OBSERVANCE LEGISLATION

The origins of Ontario's Sunday observance laws can be traced back to 1763 and the Treaty of Paris by which France ceded to Britain the land which today comprises the province of Ontario.¹ With its new dominion over the colony, Britain extended to it all of the Laws of the Realm. Principal among the English statutes on the subject of Sunday observance was a 1677 law entitled An Act for the Better Observation of the Lord's Day, Commonly Called Sunday.² This Act prohibited the carrying on of labour, business, the sale of goods, commercial travel and several other activities on the Lord's Day and penalized offenses by the imposition of fines.³ The purpose of the law was primarily religious in nature as is demonstrated in the preamble:

For the better observation and keeping holy the Lord's Day, commonly called Sunday; . . . that all Laws enacted and in force concerning the Observation of the Lord's Day, and repairing to the Church thereon, be carefully put in execution; and that all and every person and persons whatsoever, shall on every Lord's Day apply themselves to the observation of the same, by exercising themselves thereon in the Duties of piety and true religion, publicly and privately; . . .

Another English statute extended to the colony was the Sunday Fairs Act, 1448.

This Act prohibited all fairs and markets from showing any goods or merchandise on Sunday.⁴ The "prohibition" was declared necessary to prevent the "abominable injuries and offenses done to Almighty God and to his saints," by virtue of activities associated with fairs and markets such as bodily labour and the "horrible defiling of souls" resulting from "buying and selling, with many deceitful lies and false perjury, with drunkenness and strifes" ⁵

The English laws with their overtly religious objectives continued in force in the colony until 1845 when the then newly created province of Canada enacted its own Sunday observance statute.⁶ Not surprisingly, the English statutes formed the basis of the new provincial legislation, the general thrust and purpose of which was

"merely to enact prevailing English legislation in force in Upper Canada at that time in a form which was more suited to the conditions and activities of the Upper Canadians of that day."⁷

1845 An Act to Prevent the Profanation of the Lord's Day, Commonly Called Sunday, in Upper Canada 1845, 8 Vic., c. 45 (U.C.). The Act prohibited virtually all activity on Sunday, except churchgoing and certain works of necessity and charity.⁸ Offenses included:

- selling goods or real estate;
- pursuing the ordinary calling of a merchant or tradesman;
- selling liquor in a tavern;
- publicly exhibiting oneself in a state of intoxication;
- brawling or using profane language in the streets;
- convening or attending any public political meeting;
- playing various sports, gambling, racing, fishing, hunting or shooting;
- bathing in any public place or in sight of a place of public worship, or a private residence.

Exceptions included:

- conveying travellers or Her Majesty's mail by land or water;
- selling drugs and medicines; and
- such other works of necessity or charity as the Courts might determine.⁹

Violations resulted in the imposition of fines. Public entertainment, amusements, and debates for which an admission fee was charged¹⁰ continued to be prohibited under the English Sunday Observance Act of 1780, 21 Geo. 3, c. 49.

- 1885 The Ontario Legislature amended the Act to Prevent the Profanation of the Lord's Day to include Sunday passenger excursions by steamboat or streetcar for amusement or pleasure among the prohibitions.¹¹
- 1888 The Ontario Shops Regulation Act for the first time authorized a municipal council by-law to close any class of shop on any day of the week. Eventually, these powers were incorporated into the Municipal Act.¹²
- 1896 The Sunday observance legislation was amended to include farmers among those prohibited from carrying on their ordinary trade or calling on Sunday.¹³
- 1897 Further amendments included the prohibition against public transit and Sunday work in bakeshops.¹⁴
- 1903 Ontario's Sunday observance statute, An Act to Prevent the Profanation of the Lord's Day, was declared to be constitutionally invalid by the Judicial Committee of the Privy Council (United Kingdom) on appeal from the Supreme Court of Canada because "treated as a whole" it concerned a matter which was outside the legislative authority of the province to enact. The case of the Attorney General of Ontario v. Hamilton Street Railway¹⁵ turned on the finding that the prohibition of work on Sundays as a means of preventing the profanation of the Sabbath was in essence, a "criminal law," a matter over which the federal government has the exclusive legislative jurisdiction pursuant to s. 91(27) of the British North America Act. Sunday observance legislation could only be enacted by the federal government which, until that time, had not done so.

SUNDAY OBSERVANCE - FEDERAL JURISDICTION

Prior to the Privy Council decision in Attorney General of Ontario v. Hamilton Street Railway, it had been assumed that Sunday observance was within provincial legislative authority as being a matter of "property and civil rights" or as a matter of a "merely local or private nature in the province."¹⁶ Indeed, several other provinces had Sunday observance statutes similar to the impugned Ontario statute while the federal government had not enacted any such legislation.

The federal government moved to fill the resulting legislative void with the enactment in 1906 of the Lord's Day Act. The Act sought to provide a national framework for Sunday observance.¹⁷ Many years later it too was declared unconstitutional for violating the Charter of Rights and Freedoms.

1906 The federal Lord's Day Act, enacted by Parliament in response to the Privy Council decision in Attorney General of Ontario v. Hamilton Street Railway, prohibited the carrying on of a broad variety of activities except for works of necessity and mercy. The provincial Legislatures were given the authority to "opt-out" of any of the prohibitions by enacting specific legislation. The prohibited activities included:

- the sale or offering for sale of any goods or property;
- transacting any business or employing anyone to do any work;
- engaging in any public game or contest for gain;
- being present at any performance or public meeting elsewhere than in church at which a fee was charged for admission;
- conducting any excursion for amusement or pleasure for which a fee was charged;
- selling foreign newspapers;
- advertising anything prohibited by the Act.

The Act in effect allowed for a sort of "local option" within each province by providing that no prosecution for a violation of the Act could be commenced without the leave of the provincial Attorney General.¹⁸

All of these prohibitions remained in force in Ontario for over 40 years until the Legislature enacted legislation "opting-out" of the prohibition against sporting activities.¹⁹ During the period from the time of the federal enactment in 1906 to 1950, however, there was a general softening of resistance to allowing activities on Sundays. For example,

- 1922** Ontario enacted the One Day's Rest in Seven Act, S.O. 1922, c. 93, to deal with the issue of Sunday work for employees of hotels, restaurants or cafes. It provided for "at least 24 consecutive hours of rest in every seven days, and whenever possible . . . on a Sunday."²⁰ The legislation continues in force today.
- 1938** Toronto amended its municipal by-law to permit amateur sports in city parks.
- 1939-1945** Sunday work in industry became commonplace.²¹
- 1943** Toronto movie theatres opened on Sunday but only to members of the armed services. This "privilege" was withdrawn in 1945.²²
- 1950** Toronto and Windsor, having each conducted a referendum on the issue and having received a positive response, asked the provincial government to allow all types of sports on Sundays.²³

In response to the request by Toronto and Windsor and in recognition of changing attitudes in society, the Legislature exercised the authority given to it under the federal Lord's Day Act to opt-out of the prohibition against commercial sports activities.

The Lord's Day (Ontario) Act, S.O. 1950, c. 40 authorized municipalities to permit sports activities in their municipalities between the hours of 1:30 p.m. and 6:00 p.m. on Sundays, provided that the municipal council had first obtained the assent of a majority of municipal electors voting on the specific question.

The comments of the then Attorney General, Hon. Dana Porter, on introduction of the "opt-out" bill illustrate the ongoing conflict between the growing pressure to liberalize aspects of Sunday observance and the religious requirement of keeping the Sabbath holy.

The matter has been given great consideration by the government. It is recognized that in a province as vast in area as Ontario and with different conditions among the people, there are a variety of

opinions on the subject of Sabbath laws. This is due to a number of reasons including the proximity of the province to states and provinces with different Sabbath laws, or different enforcement of the same. Urban conditions, radio and other things, have had their effect upon the opinion of our people.

The government is most anxious to preserve the essential features of the Sabbath Day, and believes that anything approaching a wide-open Sunday is most undesirable. The religious aspect of the day should be regarded by everybody as being of primary importance. It is also altogether good that the day should be a day of rest as far as possible, from work. It is of course recognized that the Lord's Day Act has a long list of exemptions in the form of works of mercy and necessity, set out in some 24 subsections. In recent years, due to the complex society in which we live, there has been more work on Sunday than previously. The government feels, however, that this should be a minimum, having regard to all of the factors in the situation.²⁴

- 1960** The Legislature amended the Lord's Day (Ontario) Act to permit "any Sunday concert, recital and other musical performance of an artistic and cultural nature at which an admission fee is charged between the hours of 1:30-6:00 p.m." if produced by a non-profit organization.²⁵
- 1961** The Act was re-written with some additions: the 6 p.m. closing restriction on permitted activities was lifted and movies, theatrical performances, concerts and lectures run by profit-making organizations were permitted.²⁶
- 1968** The Lord's Day (Ontario) Act was further amended: 1) to permit municipal councils to enact by-laws allowing the operation of agricultural, horticultural or trade shows or scientific exhibitions after 1:30 p.m.; 2) to permit horse racing after 1:30 p.m. provided the same local option conditions were met; 3) to remove the requirement for a

vote by municipal electors as a precondition to a municipal by-law authorizing Sunday sports, movies, concerts, lectures, etc.²⁷

ONTARIO LAW REFORM COMMISSION STUDY

The trend towards liberalization of Sunday activities continued in the years following the enactment of the Ontario Lord's Day Act. One example of this trend was reflected in the government's selective prosecution of violations of the Lord's Day Act (Canada). It will be remembered that under the federal statute the consent of the provincial Attorney General was needed before a prosecution could proceed.

In 1969, the then Minister of Justice, the Hon. A. Wishart, commented on the use of the "consent for prosecution" requirement under the Act:

It is my own view that the present requirement of consent for prosecution provides an adaptability, that meets the many different needs and the many different situations that necessarily exist in Ontario . . . There are different attitudes across this province, as in the enforcement of the use of liquor - local option is a well-known principle across this province and has worked very well.²⁸

Premier John Robarts said:

The government has no intention of tolerating the continued expansion of large retail outlets being open on Sunday. I might say that we also recognize that there are small stores that are opened on Sunday that serve a very real purpose and become perhaps what one might term, part of the picture in the province.

So it is very difficult to have a completely black and white answer to the question. But we are presently prosecuting large stores that have opened on Sunday. . . . But we intend to make it very clear that we will not tolerate a completely wide open Sunday, such as shopping centres and large department stores and so on staying open.

There are many, many gradations or degrees in this whole question, which must be obvious to anyone who looks at it with care, so that it is not easy to formulate a policy. But we will use the means of prosecuting in order to indicate that it is not going to be tolerated.²⁹

The government faced calls for legislation specifically on the issue of Sunday retailing. Against this backdrop, the government referred the whole issue of Sunday observance to the Law Reform Commission for study.

1969 The Minister of Justice and Attorney General of the province requested the Ontario Law Reform Commission to undertake "a study and review of the Sunday observance legislation in effect in Ontario in all its aspects." This extensive study was to investigate the historical, religious, economic, sociological, legal and comparative background of the law relating to Sunday observance.³⁰

After reviewing the Sunday observance laws applicable in the province, the Law Reform Commission concluded that they were "largely based on a legislative approach adopted in England . . . namely, that church attendance and religious conformity should be encouraged by prohibiting secular activities and restricting employment that might attract people away from their religious exercises; also that commercial recreations, entertainments and amusements profaned the Lord's Day and should be prohibited."³¹

1970

The Law Reform Commission completed its study on Sunday Observance laws in Ontario and published its findings and recommendations for legislative reform. Chief among its 61 recommendations were:

- Ontario should provide legislative support for a uniform weekly pause day for as many persons as possible (Recommendation #1).
- The uniform weekly pause day should be Sunday (Recommendation #2).
- The Ontario legislation providing support for a Sunday pause day should be secular, and not religious, in both purpose and effect (Recommendation #3).
- The legislation should have the dual secular purposes of (a) preserving a quality environment for the pursuit of leisure activities among families and friends; and (b) ensuring that as many persons as possible will be protected from being required to work on Sundays against their will (Recommendation #4).
- The Ontario scheme of Sunday laws should prohibit all forms of selling on Sunday except for certain clearly defined exceptions (Recommendation #10).
- The scheme should prohibit commercial services, business and the employment of labour on Sunday except for certain clearly defined exceptions. This prohibition should be supplementary to the general prohibition of selling on Sunday (Recommendation #26).
- The exceptions from the general prohibition of Sunday selling should be based on their "essentiality" (Recommendation #11).
- Any exceptions from the general prohibition of Sunday selling should be carefully regulated and contained in order that the intended purposes of the legislation will not be eroded by camouflaged selling of non-essential items through "scrambled merchandising" (Recommendation #12).
- The provincial licensing body (appointed by the Lieutenant Governor in Council) should be empowered to grant additional exemptions from the Sunday prohibitions for any class of store or business establishment within any regions, township or municipality, or parts thereof, which are designated as "tourist areas" by the Lieutenant Governor in Council (Recommendations # 25 and 47).

In order to achieve the two secular purposes referred to in Recommendation #4 above, the Commission felt "constrained to look first at Sunday selling as the most obvious area requiring regulation."³² It cited three reasons for its proposal to prohibit Sunday selling:³³

- The retailing and wholesaling sector is a large employer:
 - by curtailing Sunday selling, most of the retail employees will be assured of freedom from work on Sundays to engage in leisure activities of their choosing with family and friends;
 - in the absence of a law regulating Sunday openings, competition in the highly sensitive retail industry will force other retailers, particularly the food stores (discount or not) and discount department stores to open;
 - it is doubted that retail employees are in an economic position to either negotiate a satisfactory financial arrangement for themselves or have much choice about whether they want to work or not.
- Open commercial Sundays would result in a significant increase in the price of retail goods, particularly food, due in part to the potential demands for increased wages by retail employees.
- Sunday closing would preserve a "quality environment" for leisure activities among friends and family.

RETAIL BUSINESS HOLIDAYS ACT: 1975 - PRESENT

The findings and recommendations of the Law Reform Commission led ultimately to the introduction in 1975 of the Retail Business Holidays Act (RBHA). The Act was designed to reflect the Commission proposal that Sunday retailing should be prohibited and a new legislative approach adopted. The approach was to be changed from the religious one of observance and prevention of the profanation of the Sabbath to securing the secular objectives of preservation of a common pause day and the protection of workers.³⁴ In the years following the enactment of the

Retail Business Holidays Act, the issue that was to occupy the Courts more than any other was whether the Act truly was secular in purpose and effect.

1975

The Hon. J.P. MacBeth, Solicitor General, introduced An Act to Regulate Holiday Closings for Retail Business (RBHA) for first reading on October 29, 1975. The Minister cited the Report and recommendations of the Law Reform Commission as the basis of the legislation. The stated intent of the new Act was "to permit as many people as reasonably as possible to enjoy a common pause day."³⁵

The Act was passed by the Legislature and was proclaimed in force on January 1, 1976. It prohibited the carrying on of a retail business on holidays, including Sundays. This general prohibition was subject to several exceptions:

- the sale of foodstuffs, newspapers or periodicals, tobacco, antiques and handicrafts, if the goods are sold in an establishment where there are no more than three people serving the public and the total selling area is less than 2,400 square feet;
- sale of drugs where there are no more than four people serving the public;
- gasoline, motor oil;
- nursery stock, flowers and gardening supplies;
- fresh fruit or vegetables;
- retail business concerned with educational, recreational or amusement activities;
- stores which closed for 24 consecutive hours in the 32-hour period between 4:00 p.m. Friday and midnight Sunday, where the number of staff serving the public did not exceed seven and the total selling area was less than 5,000 square feet.

One of the most significant exceptions was the local option provision allowing municipalities to exempt a retail business from the general prohibition where "it is essential for the maintenance or development of a tourist industry" in the municipality.³⁶

- 1976 In response to numerous inquiries from the public, the Solicitor General's Legal Branch advised that partitioning of the floor space of stores to create a temporary selling area of not more than 2,400 square feet was permitted under the Act.³⁷

COURT CHALLENGES

The Retail Business Holidays Act proved to be controversial legislation. In the years following its enactment there were several court challenges. However, it was with the 1982 enactment of the Charter of Rights and Freedoms that the RBHA experienced the greatest number and most fierce challenges. These Charter challenges threatened the validity of the Act right up to the present.

- 1982 Lord's Day Alliance of Canada v. Regional Municipality of Peel (1982), 135 D.L.R. (4th) 657 (Ont. Court of Appeal).

The Court of Appeal considered the validity of a municipal by-law passed pursuant to s. 4(2) of the RBHA which purported to exempt a retail business because "it was essential for the maintenance or development of a tourist industry" in the municipality. The Court was called upon to determine what evidence, if any, had to be considered by the municipal council before the council could enact a "tourist exemption" by-law.

The Court held that a municipal tourist exemption by-law must be supported by objective evidence of a tourist industry, and the necessity of the exemption for the maintenance or development of that industry. It was not sufficient for the municipal council to make a subjective assertion that such was the case.

With respect to the particular facts of this case, the Court held that there was no objective evidence and therefore the by-law was declared invalid.

- 1983 R. v. Magder (1983), 41 O.R. (2d) 281 (Ont. Court of Appeal).

The case concerned the meaning of the word "handicrafts" under s. 3(1)(a)(iv) of the Act. The accused sought to have the term interpreted to include fur coats so as to take advantage of the exemption under the RBHA.

The Court of Appeal found that "handicrafts" did not include fur coats. In so finding, the Court stated that the intent of the Act was "to provide a holiday on certain defined days, including Sundays, for commercial establishments and their employees, subject to certain exceptions." Relying on this legislative intention, the Court concluded that ". . . any interpretation of 'handicraft' that would include fur coats produces a result quite contrary to . . . the purpose of the statute and should be rejected."³⁸

1984 R. v. Videoflicks Ltd. (1984), 48 O.R. (2d) 395. (Ont. Court of Appeal) (Appealed to the Supreme Court of Canada under the name Edwards Books & Art Ltd. v. The Queen).

This case presented the Court of Appeal with its first opportunity to consider the constitutional validity of the RBHA in light of the Charter of Rights and Freedoms. The constitutional issues were ultimately determined by the Supreme Court of Canada based on different reasoning. It is important to note, however, that the Court of Appeal upheld the validity of the Act while finding that it violated the religious freedoms of those non-Sunday observing retailers who did not fit within the staffing and square footage restrictions of the Sabbatarian exemption under the Act. It was held that the RBHA was of no force and effect in respect of those retailers.

The Court also found that the "rental of video tapes" did not constitute a "sale" and the business was not a "retail business" within the meaning of the Act, a determination which was not appealed to the Supreme Court.³⁹

1984 People for Sunday Association of Canada v. Regional Municipality of Peel (4 December 1984), Toronto, RE 1112/83 (Ont. High Court) (as yet unreported).

At issue was the validity of a municipal "tourist exemption" by-law. The Court was required to determine whether the evidence relied upon by the local council was adequate in accordance with the principle in the 1982 Court of Appeal decision in the Lord's Day Alliance of Canada v. Regional Municipality of Peel.

The Court held that a possibly "flawed and biased" report (concerning the existence of tourism industry and the importance of the retailer's business to the maintenance and development of the industry), prepared for and submitted by the retailer seeking the exemption, was sufficient.

The report, though flawed, constituted some objective evidence upon which the council was entitled to rely.

1985 R. v. Big M Drug Mart Ltd., [1985] 1 S.C.R. 295 (Supreme Court of Canada).

In a case originating in Alberta, the defendant had been charged with unlawfully carrying on the sale of goods contrary to s. 4 of the Lord's Day Act (Canada). The issue on appeal to the Supreme Court of Canada was whether the federal Act and especially s. 4 (the section which sets out the basic prohibition against any work or commercial activity on the Lord's Day) infringed the right to freedom of religion guaranteed by the Charter of Rights and Freedoms; and if so, whether the infringement was reasonable and demonstrably justified in a free and democratic society in accordance with s. 1 of the Charter.

The Court reviewed the legislative history of the federal Act and found the legislative purpose to have been both historically and consistently the compulsion of religious observance. This purpose violated s. 2(a) of the Charter.

To the extent that it binds all to a sectarian Christian ideal, the Lord's Day Act works a form of coercion inimical to the spirit of the Charter and the dignity of all non-Christians.⁴⁰

The Charter guarantee of freedom of religion operates as a restriction on the government's law-making power. Dickson J., speaking for the Court, said:

In my view, the guarantee of freedom of conscience and religion prevents the government from compelling individuals to perform or abstain from performing otherwise harmless acts because of the religious significance of those acts to others . . . [A]s I read the Charter, it mandates that legislative preservation for a Sunday day of rest should be secular, the diversity of belief or non-belief, the diverse socio-cultural backgrounds of Canadians make it constitutionally incompetent for the federal Parliament to provide legislative preference

for any one religion at the expense of those
of another religious persuasion⁴¹

The Court further concluded that the infringement of freedom of religion was not reasonable and demonstrably justified under s. 1 of the Charter. The legislation was declared to be wholly inoperative and of no force and effect.

The result of this decision was to remove the criminal law underpinnings of Sunday retail closing laws in the provinces. It will be remembered that the federal Act was enacted in 1906 to provide the criminal law framework for Sunday observance under which a range of activities were prohibited subject to the authority of the provincial legislatures to "opt-out" of such prohibitions.

The case is also important because of the Court's acceptance of a secular justification for a day of rest in the Canadian constitutional context.⁴²

1986

On January 8, 1986, the Ontario Progressive Conservative Party announced the formation of a Progressive Conservative Party Task Force to study the issue of extended shopping hours with the premise that the "laws should be dramatically broadened."⁴³ The Progressive Conservative Task Force held 12 days of public hearings in 11 centres, and received 130 oral presentations, most of which were accompanied by written briefs. It also received approximately 100 written submissions through the mail consisting of briefs, letters, form letters and petitions.

The Task Force Report, which contained five recommendations, was published on April 18, 1986. Among the recommendations were: that the principle of a common pause day should be maintained; that the existing legislation be clarified and enforcement strengthened; and that employees not be required, as a condition of employment, to work on Sunday.⁴⁴

1986

Edwards Books & Art Ltd. v. The Queen, [1986] 2 S.C.R. 713 (Supreme Court of Canada) (On appeal from the Ontario Court of Appeal, sub nom. R. v. Videoflicks (1984), 48 O.R. (2d) 395).

This case presented the Supreme Court with its first opportunity to examine the constitutional validity of the Ontario Retail Business Holidays Act. The Court upheld the validity of the Act and in doing so had to determine several constitutional issues:

1) Whether the Retail Business Holidays Act was within the legislative competence of the provincial legislature under s. 92 of the Constitution Act, 1867?

The Court examined the legislative intent of the Act and found that it had a secular purpose. It was "enacted with the intent of providing uniform holidays to retail workers." It was not a surreptitious attempt to encourage religious worship.⁴⁵ Speaking for the majority, Dickson C.J., concluded:

The protection of workers from pressure to work on a day when their children are out of school, their friends and relatives are available for visits, and their community is geared to social, sporting and recreational activities is not, in my opinion, a criminal law objective. If a primary purpose of the legislative enactment of a pause day is to benefit workers in these respects, the legislation is properly characterized as relating to property and civil rights within the province.⁴⁶

The Court noted that in naming Sunday as the day of rest, the Legislature was not necessarily legislating observance for religious reasons, and it was important to distinguish between the legislative intent, which in this case is secular, and the historical origins of Sunday as a common pause day.

2) Whether the RBHA infringed any of the freedoms guaranteed by the Charter of Rights and Freedoms?

With respect to the constitutionality of the RBHA, the Court examined s. 2(a) (freedom of religion), s. 7 (right to liberty) and s. 15 (equality provision) of the Charter. The Court concluded that it did not have to consider whether the Act was an infringement of s. 15 because this section was not in force at the time that the charges giving rise to the action were laid.⁴⁷ Dickson C.J., speaking for the Court, also dismissed the argument that the Act violated s. 7 saying:

whatever the precise contours of "liberty" in s. 7, I cannot accept that it extends to an unconstrained right to transact business whenever one wishes.⁴⁸

The Court found, however, that the Retail Business Holidays Act did violate freedom of religion under s. 2(a) of the Charter. Although the Act had a secular purpose, the "effect" of the legislation was to infringe the religious freedom of those retailers and consumers who observed Saturday as their Sabbath.⁴⁹

Because the RBHA contained a "Sabbatarian exemption" in s. 3(4), the negative impact on these groups was somewhat diminished. Therefore not all Saturday-observing retailers were adversely affected, only those who did not fall within the staffing and square footage requirements of the exemption. The impact of the legislation on this group was to impose the economic burden of being closed two days per week relative to the one day that Sunday-observing retailers must close. The Act therefore made it more costly for Saturday-observing retailers to practise their religious beliefs. The Court concluded that the competitive pressure imposed by the Act on non-exempt retailers to abandon the observance of their Saturday Sabbath was not insubstantial or trivial and therefore infringed the Charter freedom.⁵⁰

The Court also found that the Act imposed a burden on Saturday-observing consumers; "the Act does not impair the ability of Sunday observers to go shopping or seek professional services on Saturdays, but it does circumscribe that of the Saturday observer on Sundays."⁵¹ The Court concluded that this burden was substantial and constituted an abridgement of their religious freedom.

3) Whether the infringement of religious freedom was a reasonable limit which was demonstrably justified under s. 1 of the Charter?

In spite of the finding that the Act infringed the religious freedom of Saturday observers, the Supreme Court held that the RBHA was constitutionally valid because the limitations imposed were shown to be reasonable and demonstrably justified in a free and democratic society under s. 1 of the Charter. First, the legislative objective was found to be of sufficient importance to warrant overriding the constitutional right; it bore on a "pressing and substantial concern." The Court found evidence of this "pressing and substantial concern" in the Ontario Law Reform Commission Report on Sunday Observance Legislation which concluded:

Thus while our productive capacity and economic standard of living continue to increase in Ontario, our collective opportunity for the more intangible benefits of participation in leisure activities together [emphasis of the Report] with family, friends

and others in society continues to decrease. It is in the light of this continuing erosion of statutory holidays and evening hours that we consider it *absolutely* essential [emphasis added] that the government now attempt to preserve at least one uniform day each week as a pause day, before it is too late.⁵²

Dickson C.J., added that he regarded "as self-evident the desirability of enabling parents to have regular days off from work in common with their child's day off from school, and a day enjoyed by most other family and community members."⁵³

Secondly, the means used in the Act to attain the legislative objective were proportional and appropriate to its ends.⁵⁴ The Court accepted the argument that the retail trade presented a particularly pressing problem which made it appropriate for the Legislature to focus on the retail trade.

The Act abridged the freedom of religion of the Saturday observers as little as possible by including in the legislative scheme the Sabbatarian exemption in s. 3(4). The Court found that this exemption had the desired effect of substantially reducing the impact of the Act on those religious groups for whom Saturday is a Sabbath. There were no alternative schemes which provided complete relief for the whole class of Saturday observers that would also allow the province to achieve its objectives.⁵⁵ In addition, the Court found that the Legislature could not be faulted for limiting the application of the exemption to stores with fewer than seven employees. Balancing the interests of more than seven employees to a common pause day against the freedom of religion of those detrimentally affected retailers was both reasonable and constituted justification for the legislative scheme.⁵⁶

Finally, although not unanimously, the Court concluded that the requirements of establishing that the infringement is reasonable and demonstrably justified imposed on a Legislature enacting Sunday closing laws the obligation of attempting to "very seriously alleviate the effects of those laws on Saturday observers."⁵⁷ The Legislature had done so in this instance with the Sabbatarian exemption in s. 3(4) of the Act.

December 1986 The Retail Business Holidays Act was amended by removing all references to the Lord's Day Act (Canada) and the Lord's Day (Ontario) Act.⁵⁸

The Lord's Day (Ontario) Act was repealed.⁵⁹

January 1987 The Legislature appointed the Select Committee on Retail Store Hours "to review and report its recommendations pertaining to Sunday Shopping and Retail Store Hours."⁶⁰ Between February 16 and April 23, 1987, the Committee held 13 days of public hearings in 10 different centres across the province.⁶¹ The Committee heard 84 oral presentations and received approximately 525 written submissions.

In its May 21, 1987 Report to the Legislature, the Select Committee unanimously⁶² adopted as a guiding principle the "legislative maintenance of a common pause day." It was noted by the Committee that this principle "enjoyed wide support among a broad spectrum of individuals and organizations"⁶³ Among the 17 recommendations, the Committee proposed that the primary responsibility for the administration of retail holiday legislation should remain with the provincial government. In the exercise of this responsibility the government should formulate the general framework and policy standards for the legislation with municipalities having a limited delegated authority. In addition to other more detailed recommendations, the Committee recommended that the penalty for a conviction under the legislation be increased to 100% of gross sales or services for each day of violation plus a fine of \$1,000.⁶⁴

June 1987 The Retail Business Holidays Act was amended to allow book stores and art galleries to open on holidays, including Sundays, subject to staff and selling area restrictions.⁶⁵

April 1988 Bill 113, An Act to Amend the Retail Business Holidays Act, in which the "tourist exemption" was eliminated and province-wide retail Sunday closings would be subject to exemption under "local municipal option," received first reading. As companion legislation, Bill 114, An Act to Amend the Employment Standards Act, protecting workers from unreasonable Sunday work, was also read for the first time.⁶⁶ On introduction the then Attorney General, the Hon. Ian Scott, spoke to the need for reform of the existing legislation.

Over the past several years, it has become obvious, more so year by year, that major

changes are needed in the regulation of Sunday and holiday shopping in the province.

One of the main reasons the government decided to change the previous legislation was precisely because it was abused. The existing legislation, a political compromise in place since 1975, has been flagrantly and systematically violated during the Christmas and post-Christmas shopping season.⁶⁷

**June
1988**

The then Solicitor General, the Hon. Joan Smith, moved second reading of Bill 113. Speaking to the need for amendments to the RBHA, the Minister outlined some of the problems with the existing legislation. First, the Minister cited the fact that there were some municipal bylaws which "do not reflect the intentions of the present law," and which amount to abuses of the law. The examples cited suggested that the local option tourist exemption by-laws were being used to exempt businesses and designate areas that did not fall within any commonly understood notion of "tourism." Second, there was no way to legislatively define "tourism" to take into account the wide variety of bona fide tourism needs across the province. A third problem was the historically demonstrated unenforceability of the Act.⁶⁸

Bills 113 and 114 were referred for consideration to the Standing Committee on Administration of Justice.⁶⁹

**August
1988**

The Standing Committee on Administration of Justice commenced 26 days of public hearings on Bills 113 and 114. In addition to holding hearings in Toronto, the Committee travelled to 13 other centres: Collingwood, Orillia, London, Ottawa, Kingston, Peterborough, St. Catharines, Brantford, Windsor, Thunder Bay, Sault Ste. Marie, Sudbury and North Bay. More than 465 oral and written submissions were received by the Committee. After 23 days of clause-by-clause consideration, Bills 113 and 114 were reported back to the House.⁷⁰

**February
1989**

Bills 113 and 114 received Royal Assent.⁷¹ The resulting changes to the RBHA were as follows:

- the previous staff and square footage restrictions for pharmacies which were permitted to open on Sundays were replaced with a square footage restriction only. The service area must not exceed 7,500 square feet;⁷²

- a "local option" exemption replaced the previous "tourist exemption." Now local municipalities have broad powers to regulate retail business on Sundays and holidays in their areas, to "opt-out" completely or in some way from the provincial framework of mandatory retail closing;⁷³
- a broader "Sabbatarian exemption" is provided to allow any retail business to remain open on Sunday if it always closes on another day of the week by reason of the religion of the owner;⁷⁴
- penalties were increased from \$10,000 to the greater of \$50,000 or the gross sales on the date of the violation;⁷⁵
- enforcement provisions were strengthened as for example, the provision allowing a court to issue an order compelling a retail business to close to ensure compliance with the Act or local bylaw.⁷⁶

**April
1989**

R. v. Paul Magder Furs Ltd. (1989), 69 O.R. (2d) 172 (Ont. Court of Appeal) (leave to appeal to the Supreme Court of Canada refused (1989), 45 C.R.R. 344 n. Although decided after the enactment of the Bill 113 amendments, this case concerned the provisions of the Act as they were before the amendments.)

The Retail Business Holidays Act was once again challenged as violating the Charter of Rights and Freedoms. On this occasion the challenge was based on the s. 15 equality provisions. (Previously, in the Edwards Books case⁷⁷ the Supreme Court of Canada had refused to consider whether the RBHA violated the equality provisions of s. 15 because the section only came into force in 1985 after the charges giving rise to the case had been laid.)

In the Paul Magder Furs case the Ontario Court of Appeal accepted the concession made by Crown Counsel that the RBHA violated the s. 15 equality rights of non-Sunday observers.⁷⁸ However, adopting the reasoning of the Supreme Court in Edwards Books, the Court similarly concluded that the infringement of s. 15 was a reasonable and demonstrably justified limit under s. 1. The accused had presented "new evidence" in an attempt to show that the legislation no longer constituted a reasonable limit. The Court of Appeal rejected the evidence, including attitudinal studies showing support for Sunday shopping, saying that this evidence was not a "great deal different . . . than the evidence that had been before the Supreme Court which was based in large part on the findings of the Ontario Law Reform Commission Report of 1970."⁷⁹ The Court of Appeal noted that, in

any event, the Supreme Court had previously found that the limits under the RBHA to be justified because of the self-evident need to protect retail workers with respect to a common pause day.⁸⁰ Finally, the Court noted "that attitudinal studies may not be a suitable criterion for assessing the justification of a Charter limitation, particularly when the result would have the effect of denying statutory protection to a vulnerable segment of society."⁸¹

December 1989 Attorney General of Ontario v. Paul Magder Furs Ltd. (1990), 65 D.L.R. (4th) 263 (Ont. High Court).

The Attorney General sought a compliance order under s. 8(1), a new enforcement provision of the Retail Business Holidays Act⁸² requiring the defendant retailer to comply with the Act and remain closed on Sundays. The Court granted the order on the basis that the test in any particular case is whether there is a risk of future non-compliance with past performance of non-compliance giving rise to a reasonable apprehension that such performance will continue.⁸³

March 1990 Municipality of Metropolitan Toronto v. Paul Magder Furs Ltd. (1990), 72 O.R. (2d) 155. (Ont. Court of Appeal) (Appeal to the Supreme Court of Canada was initiated but not pursued.⁸⁴)

Section 8, the new enforcement provision of the RBHA, was once again at issue. In this case the Court had to determine whether the appropriate applicant for a compliance order under s. 8(1) was either the Attorney General or the Municipality in which the retailer operated. The section provides:

8(1) Upon the application of counsel for the Attorney General or of a municipality to the Supreme Court, the court may order that a retail business establishment close on a holiday to ensure compliance with this Act or a by-law or regulation under this Act.

Municipalities had been given the authority under the Bill 113 amendments to modify the obligatory holiday retail closing; however, in this case the Municipality of Metropolitan Toronto had not exercised its authority. It nonetheless brought the application for the compliance order.

The Court of Appeal decided that section 8(1) permits either the Attorney General or the Municipality to make an application for a

compliance order. It was irrelevant that the Municipality had not passed a by-law and there is no need for a municipality to do so in order to enforce the Act pursuant to s. 8(1).⁸⁵

**June 22,
1990**

Regional Municipality of Peel v. Great Atlantic and Pacific Company of Canada Ltd. (1990) 73 O.R. (2d) 289 (Ont. High Court).

The first challenge to the validity of the Bill 113 amendments which had come into force on February 27, 1989 was by several large retailers who argued that the recent amendments were significant and warranted fresh consideration of the constitutional issues as had been determined previously by the Supreme Court in Edwards Books.

The Court agreed and concluded that the Act, as amended, violated the freedom of religion and equality provisions of the Charter. More importantly, and contrary to the Supreme Court decision in Edwards Books, the Court found that the violations were not justified under s. 1 of the Charter. The entire Act, as amended, was therefore declared to be of no force and effect.

In particular, the Court found that the s. 2(a) freedom of religion provision of the Charter was infringed for several reasons: first, the new "Sabbatarian exemption" did not alleviate the burden and inconvenience of Sunday closing on non-Sunday observing consumers;⁸⁶ second, this new exemption removed the burden only from the *owner* and those employees who happened to have the same religious beliefs as the owner;⁸⁷ third, the exemption did not alleviate the burden on non-Christian retailers of being compelled to remain closed on the Christian religious holidays of Christmas Day and Good Friday, as well as on their own holy days.⁸⁸

The Court also concluded that the Act, as amended, violated the s. 15 equality provision of the Charter. The effect of the Act, as amended, was to discriminate against retail owners, employees and consumers who observe a day other than Sunday as their Sabbath. Discrimination on these grounds is contrary to s. 15.⁸⁹

In considering whether the Act as amended was justified by s. 1, the Court looked at:

- the extensive "new evidence" regarding public support for Sunday retailing and the preferences of retail employees;
- the amended Sabbatarian exemption; and

- the amended municipal option.

The Court rejected the argument that the "new evidence" constituted a basis for overturning the previous finding by the Supreme Court that the Charter infringement was reasonable and demonstrably justified. Instead, the Court accepted that the conclusions of the 1970 Ontario Law Reform Commission Report regarding the particular vulnerability of retail employees, the substantial competitive pressure in the retail trade compelling individual retailers to open on holidays, the low rate of unionization among retail workers, and their relative low wages and lack of skills continued to be matters of pressing concern. The legislative objective of providing a common pause day continued to be a matter of "substantial and pressing concern."⁹⁰

However, the Court concluded that the new municipal option, which gave municipalities "*carte blanche*" to regulate retail opening and closing on holidays, had the effect of so diluting the legitimate legislative objective of the Act as to render the objective no longer one of a "substantial or pressing concern." The objective could not be so pressing as to justify the infringement of a Charter guaranteed right if individual municipalities could completely nullify the objective.⁹¹

The Court also found that there was no "careful design or rational connection" to the objective where municipalities were left to determine their own criteria to be applied in granting the exemptions.⁹²

Although the Court concluded that the Act as a whole was of no force and effect, it noted that the new Sabbatarian exemption, though it violated freedom of religion, was justified as reflecting a reasonable trade-off between different possible schemes.⁹³

**June 26,
1990**

The Hon. Ian Scott, Attorney General, issued a statement in the Legislature indicating that the High Court decision in Regional Municipality of Peel v. Great Atlantic and Pacific Company of Canada Ltd. would be appealed, and that a stay of the judgement pending appeal would be sought.⁹⁴

**July 12,
1990**

Regional Municipality of Peel v. The Great Atlantic and Pacific Company of Canada Ltd. (1990), 74 O.R. (2d) 161 (Ont. Court of Appeal).

The request to stay the judgement was denied. The result of this decision was that there was no law regulating retail closing on Sundays pending the Court of Appeal determination of the issue of the

constitutional validity of the RBHA. Retailers were free to open on Sundays and other holidays.

Sept. 24,
1990 The Ontario Court of Appeal began a five-day appeal hearing of the High Court decision in Regional Municipality of Peel v. The Great Atlantic and Pacific Company of Canada Ltd.

March 20,
1991 Regional Municipality of Peel v. The Great Atlantic and Pacific Company of Canada Ltd. (1991), 2 O.R. (3d) 65 (Ont. Court of Appeal).

In a unanimous decision the Ontario Court of Appeal overturned the judgement of the High Court and held that the Retail Business Holidays Act, as amended, was constitutionally valid. It did not violate the freedom of religion, right to liberty or equality provisions of the Charter.

The Court looked first at the legislative purpose of the Act, as amended, and determined that it was the preservation of a common pause day, a secular objective which did not violate the Charter.

Secondly, relying on the Supreme Court of Canada decision in Edwards Books, the Court examined the effect of the legislation to determine "whether the impact of the Act is to increase the cost of practising and otherwise manifesting religious beliefs to workers, consumers and employees who observe the Sabbath on a day other than a Sunday in a manner that is more than trivial or insubstantial."⁹⁵ The Court concluded that the Act, as amended, had the effect of eliminating or reducing the economic burden and competitive pressure that had been found by the Supreme Court to exist for non-Sunday observing retailers, consumers, and employees under the previous Act. The newly amended and expanded sabbatarian exemption (which permits a retailer to open on Sunday if he is always closed another day of the week by reason of the religion of the owner) relieved the burden which the Supreme Court in Edwards Books had previously found to be a substantial interference with the freedom of religion of retailers. The Court further concluded that the evidence fell far short of demonstrating that there is a burden upon either non-Sunday observing consumers or employees that is anything more than trivial or insubstantial.⁹⁶

With respect to right to liberty under s. 7 of the Charter, the Court of Appeal concluded that the economic and property rights that are affected under the Act are not protected by this section.

Relying on a line of Supreme Court cases which limited the application of the s. 15 equality provisions, the Court also concluded that there was no basis for applying s. 15 to retailers, consumers or employees.

Having concluded that the RBHA, as amended, did not violate the Charter, the Court nonetheless went on to consider the comments of the High Court on the issue of whether the Act, as amended, could be justified as being reasonable and demonstrably justified under s. 1. Contrary to the High Court, the Court of Appeal concluded that even if the legislation had been found to infringe the Charter it would have been justified under s. 1.⁹⁷ Noting that the Act had previously been upheld under s. 1 by the Supreme Court in the Edwards Books case, the Court considered whether the purpose of the legislation still bore on a "pressing and substantial concern" which would be of sufficient importance to override a constitutional right. Following the Supreme Court decisions in Big M Drug Mart and Edwards Books, the Court of Appeal concluded that the objective of a common pause day continued to be of sufficient importance to override a constitutional right.⁹⁸

The Court also considered whether, in achieving the legislative objective, the measures used were overly intrusive to the constitutionally protected right. It concluded that the Act, as amended, was less intrusive than the previous Act. The "local option" exemption, which was a legitimate delegation of power to the subordinate municipal councils, did not take away from the legislative objective of securing a common pause day.⁹⁹

**April 6,
1991**

The Hon. Mike Farnan, Solicitor General, announced that the government will be introducing new legislation on Sunday retailing within the next two months. According to the Solicitor General the new scheme will guarantee a common pause day but allow exemptions for tourist areas. The government will provide provincial criteria for the meaning of "tourist area."¹⁰⁰

**May
1991**

An application seeking leave to appeal the Ontario Court of Appeal decision in Regional Municipality of Peel v. The Great Atlantic and Pacific Company of Canada Ltd. to the Supreme Court of Canada was filed by the defendants.¹⁰¹

**June 4,
1991**

Bill 115, An Act to amend the Retail Business Holidays Act and the Employment Standards Act in respect of the opening of retail business establishments and employment in them, received first reading.

On introduction of the bill, the Solicitor General, the Hon. Mike Farnan stated that the purpose of the legislation is to provide a common pause day for the province. This goal is to be achieved first by replacing the existing "municipal option" exemption in the RBHA with an exemption based on the maintenance and development of the tourism industry. Provincial criteria will be used to determine eligibility for the "tourism" exemption. Second, the existing right to refuse unreasonable Sunday work is to be replaced with an absolute right to refuse work on Sunday.

The Solicitor General noted that the tourism industry is one of the cornerstones of the provincial economy and that it has unique requirements which have not been adequately addressed by the existing legislation or any previous legislation.¹⁰²

FOOTNOTES

¹ Ontario, Ontario Law Reform Commission (H. Allan Leal, Chair) Report on Sunday Observance Legislation (Toronto: Department of Justice, 1970), p. 25.

² Ibid.

³ 29 Car. 2, c. 7.

⁴ 27 Hen. 6, c. 5.

⁵ Ontario Law Reform Commission, Report on Sunday Observance Legislation, p. 26.

⁶ Ibid., p. 29.

⁷ Ibid., p. 30.

⁸ Ontario, Legislative Assembly, Compendium: Bill to Amend the Retail Business Holidays Act, 34th Parliament, 1st session (tabled on 25 April 1988): Appendix B, p. 1.

⁹ Ontario Law Reform Commission, Report on Sunday Observance Legislation, p. 29.

¹⁰ Ibid., p. 31.

¹¹ Ibid., p. 32.

¹² Ibid., p. 34.

¹³ Ibid., p. 32.

¹⁴ An Act Respecting Shops and Places other than Factories 1897, 60 Vic., c. 51, s. 40 (Ont.).

¹⁵ [1903] A. C. 524.

¹⁶ Peter Hogg, Constitutional Law of Canada, 2nd ed. (Toronto: Carswell, 1985), p. 305.

¹⁷ S.C. 1906, c. 27.

¹⁸ Ibid., s. 16.

¹⁹ Ontario Law Reform Commission, Report on Sunday Observance Legislation, p. 63.

²⁰ Ibid.

²¹ Ontario, Compendium: Bill to Amend the Retail Business Holidays Act, p. 1.

²² Ibid.

²³ Ibid., p. 2.

²⁴ Ontario, Legislative Assembly, Hansard: Official Report of Debates, 23rd Parliament, 2nd Session (21 March 1950): A6-A7.

²⁵ R.S.O. 1960, c. 225; and Ontario Law Reform Commission, Report on Sunday Observance Legislation, p. 64.

²⁶ Ontario Law Reform Commission, Report on Sunday Observance Legislation, p. 65.

²⁷ Ibid., p. 66.

²⁸ Ontario, Legislative Assembly, Hansard: Official Report of Debates, 25th Parliament, 2nd Session (7 October 1969): 6725, 6726.

²⁹ Ontario, Legislative Assembly, Hansard: Official Report of Debates, 25th Parliament, 2nd Session (1 October 1969): 6485.

³⁰ Ontario Law Reform Commission, Report on Sunday Observance Legislation, p. 15.

³¹ Ibid., p. 68.

³² Ibid., p. 293.

³³ Ibid., pp. 293-295.

³⁴ Ontario, Legislative Assembly, Hansard: Official Report of Debates, 30th Parliament, 1st Session (6 November 1975): 330.

³⁵ Ibid.

³⁶ Retail Business Holidays Act, S.O. 1976, c. 9, ss. 2, 3, 4.

³⁷ Ontario, Compendium: Bill to Amend the Retail Business Holidays Act, Appendix A, p. 1.

³⁸ R. v. Magder (1983), 41 O.R. (2d) 281, 285.

³⁹ Ibid., p. 436.

⁴⁰ R. v. Big M Drug Mart Ltd., [1985] 1 S.C.R. 295, pp. 336-337.

⁴¹ Ibid., pp. 350-351.

⁴² Ibid., p. 353.

⁴³ Ontario, Ontario Progressive Conservative Task Force on Extended Shopping Hours (Terry O'Connor, Chair), Report (Toronto: The Task Force, 18 April 1986), p. 2.

⁴⁴ Ibid., p. 5.

⁴⁵ Edwards Books & Art Ltd. v. The Queen, [1986] 2 S.C.R. 713 (on appeal from the Ont. C.A., sub nom. R. v. Videoflicks (1984), 48 O.R. (2d) 395), 744.

⁴⁶ Ibid., p. 740.

⁴⁷ Ibid., p. 786.

⁴⁸ Ibid.

⁴⁹ Ibid., pp. 765-766.

⁵⁰ Ibid., p. 766.

⁵¹ Ibid.

⁵² Ibid., p. 769.

⁵³ Ibid., p. 770.

⁵⁴ Ibid., pp. 768 and 783.

⁵⁵ Ibid., p. 783.

⁵⁶ Ibid., p. 781.

⁵⁷ Ibid., p. 782.

⁵⁸ Equality Rights Statute Law Amendment Act, S.O. 1986, c. 64, s. 62.

⁵⁹ Ibid., s. 31.

⁶⁰ Ontario, Legislative Assembly, Select Committee on Retail Store Hours, Second Report (Toronto: The Committee, 21 May 1987), p. 3.

⁶¹ Ibid., p. 4.

⁶² Ibid., p. 5.

⁶³ Ibid., p. 7.

⁶⁴ Ibid., pp. 1-2.

⁶⁵ Retail Business Holidays Amendment Act 1987, S.O. 1987, c. 36.

⁶⁶ Ontario, Legislative Assembly, Hansard: Official Report of Debates, 34th Parliament, 1st Session (21 April 1988): 2737.

⁶⁷ Ontario, Legislative Assembly, Hansard: Official Report of Debates, 34th Parliament, 1st Session (14 April 1988): 2463.

⁶⁸ Ontario, Legislative Assembly, Hansard: Official Report of Debates, 34th Parliament, 2nd Session (6 June 1989): 4044.

⁶⁹ Ontario, Legislative Assembly, Votes and Proceedings, 34th Parliament, 1st Session (29 June 1988): 831.

⁷⁰ Interview with Deborah Deller, Committee Clerk, Standing Committee on Administration of Justice, Toronto, 29 November 1990.

⁷¹ Ontario, Legislative Assembly, Votes and Proceedings, 34th Parliament, 1st Session (7 February 1989): 1812; and *idem*, Votes and Proceedings, 34th Parliament, 1st Session (27 February 1989): 1975.

⁷² Retail Business Holidays Amendment Act, 1989, S.O. 1989, c. 3, s. 3(c).

⁷³ *Ibid.*, s. 4.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*, s. 7.

⁷⁶ *Ibid.*, s. 8.

⁷⁷ Edwards Books & Art Ltd. v. The Queen, [1986] 2 S.C.R. 713.

⁷⁸ R. v. Paul Magder Furs Ltd. (1989), 69 O.R. (2d) 172, p. 182.

⁷⁹ *Ibid.*, p. 185.

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² S.O. 1989, c. 3.

⁸³ Attorney General of Ontario v. Paul Magder Furs Ltd. (1990), 65 D.L.R. (4th) 263, p. 268.

⁸⁴ Telephone interview with the Clerk of Process, Supreme Court of Canada, Ottawa, 5 November 1990.

⁸⁵ Municipality of Metropolitan Toronto v. Paul Magder Furs Ltd. (1990), 72 O.R. (2d) 155, p. 158.

⁸⁶ Regional Municipality of Peel v. The Great Atlantic and Pacific Company of Canada Ltd. (1990), 73 O.R. (2d) 289, p. 295.

⁸⁷ Ibid.

⁸⁸ Ibid., p. 297.

⁸⁹ Ibid., p. 310.

⁹⁰ Ibid., pp. 304-305.

⁹¹ Ibid., p. 308.

⁹² Ibid., p. 309.

⁹³ Ibid., p. 306.

⁹⁴ Ontario, Legislative Assembly, Official Report of Debates (Hansard), 34th Parliament, 2nd Session (26 June 1990): 1929.

⁹⁵ Regional Municipality of Peel v. Great Atlantic and Pacific Company of Canada Ltd. (1991), 2 O.R. (3d) 65, p. 75.

⁹⁶ Ibid., p. 85.

⁹⁷ Ibid., p. 95.

⁹⁸ Ibid., p. 94.

⁹⁹ Ibid., p. 93.

¹⁰⁰ "Province Vows Sunday Law in 6-8 Weeks," Toronto Star, 6 April 1991.

¹⁰¹ "Chains ask top court to weigh Sunday law: Supermarkets seek leave to appeal Ontario ruling to Supreme Court," Globe and Mail, 22 May 1991; and telephone interview with Joanne Laniel, Department of the Clerk of Process of the Supreme Court of Canada, Ottawa, 11 June 1991.

¹⁰² Ontario, Legislative Assembly, Official Report of Debates (Hansard), 35th Parliament, 1st Session (4 June 1991): 1668.



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